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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/500,094   | 02/08/2000  | Russel D. Leatherman | 2400-505            | 2120             |
| 27820  | 7590        | 04/07/2006           | EXAMINER            |                  |
| WITHROW & TERRANOVA, P.L.L.C.<br>P.O. BOX 1287<br>CARY, NC 27512 |             |                      | HAVAN, THU THAO     |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3624                |                  |

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|  |                            |  |  |
|--|----------------------------|--|--|
| <b>Office Action Summary</b>   | Application No.            | Applicant(s)   |  |
|  | 09/500,094                 | LEATHERMAN ET AL.  |  |
|  | Examiner<br>Thu Thao Havan | Art Unit<br>3624   |  |
| <i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>   |                            |  |  |
| <b>Period for Reply</b>  |                            |  |  |
| A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS,<br>WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.   |                            |  |  |
| <ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</li> </ul> <p>Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p> |                            |  |  |
| <b>Status</b>  |                            |  |  |
| 1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>17 January 2006</u> .<br>2a) <input type="checkbox"/> This action is FINAL.                    2b) <input checked="" type="checkbox"/> This action is non-final.<br>3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.  |                            |  |  |
| <b>Disposition of Claims</b>   |                            |  |  |
| 4) <input checked="" type="checkbox"/> Claim(s) <u>29-35 and 49-58</u> is/are pending in the application.<br>4a) Of the above claim(s) _____ is/are withdrawn from consideration.<br>5) <input type="checkbox"/> Claim(s) _____ is/are allowed.<br>6) <input checked="" type="checkbox"/> Claim(s) <u>29-35 and 49-58</u> is/are rejected.<br>7) <input type="checkbox"/> Claim(s) _____ is/are objected to.<br>8) <input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement.   |                            |  |  |
| <b>Application Papers</b>  |                            |  |  |
| 9) <input type="checkbox"/> The specification is objected to by the Examiner.<br>10) <input type="checkbox"/> The drawing(s) filed on _____ is/are: a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner.<br><p style="margin-left: 20px;">Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).</p> <p style="margin-left: 20px;">Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).</p> 11) <input type="checkbox"/> The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.   |                            |  |  |
| <b>Priority under 35 U.S.C. § 119</b>  |                            |  |  |
| 12) <input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).<br>a) <input type="checkbox"/> All    b) <input type="checkbox"/> Some * c) <input type="checkbox"/> None of:<br>1. <input type="checkbox"/> Certified copies of the priority documents have been received.<br>2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.<br>3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).<br><p>* See the attached detailed Office action for a list of the certified copies not received.</p>                             |                            |  |  |
| <b>Attachment(s)</b>   |                            |  |  |
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)<br>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)<br>3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____.   |                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____.<br>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)<br>6) <input type="checkbox"/> Other: _____. |  |

**Detailed Action**

***Response to Amendment***

Claims 29-35 and 49-58 are pending. This action is in response to the remarks received January 17, 2006.

***Response to Arguments***

Applicant's arguments with respect to claims 29-35 and 49-58 have been considered but are moot in view of the new ground(s) of rejection.

***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 29-35, and 49-58 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-27 of U.S. Patent No. 6,052,629. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 29-35, and 49-58 of pending

application 09/500,094 are the same method for intended use as claims 1-27 of U.S. Patent No. 6,052,629.

### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29-35, and 49-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US 5,717,374) in view of Seifert et al. (US 6,505,170).

Re claims 29, 49, and 58, Smith teaches a method of providing an interactive fueling operation (fig. 1a) comprising:

providing an interactive graphical user interface at a fueling position on a fuel dispenser (fig. 2a, element 30);  
a thin client on said interactive graphical user interface (fig. 9, element 52a);  
displaying information to a customer at the graphical user interface in response to receipt of a markup language from a server spaced from the fuel dispenser, by delivery over a network (col. 11, line 31 to col. 12, line 29);  
prompting the customer to select a service with the displayed information (col. 9, line 33 to col. 10, line 55);

receiving a response from the customer identifying a selected service to be provided by the server (fig. 2b); *in other words, in figure 2a the customer selects the service by entering the fueling information thus a response is received from the customer,*

transferring the response from the dispenser to the server over the network (fig. 9);

and

transmitting a service from the server over the network to the fueling position based on the customer response at the fueling position (fig. 9). *In other words, Smith discloses inputting messages such as advertisements, weather reports, road conditions, traffic conditions, etc. over the network in a display in related to fueling station.*

However, Smith does not explicitly teach executing a web browser. Nevertheless, Smith discloses network with a memory in relation to personal, mini, or mainframe computer that is located at a great distance from the local station (col. 12, lines 1-12). On the other hand, Seifert executes a web browser by having an open network such as the Internet in the point-of-sale (POS) such as a gas pump to allow user's interaction for certain goods or services (col. 3, lines 54-61; col. 13, lines 35-38). Seifert discloses the host communicates with the devices over a communication network, such as a proprietary computer network, an open network such as the Internet, or a telephone network. Where the POS device is connected by a LAN to other devices, the POS device may also poll and check the status of other devices connected to the LAN (e.g., a PC, cash register, or gas pump). Thus, it would have been obvious to one of ordinary skill in the art to execute a web browser in relation to a gas pump as discloses in Seifert.

Re claims 30, 50, and 56-57, Smith teaches delivery transfer and transmission are over the Internet (fig. 9, element 52a). In figure 9a, element illustrates a communication network. An Internet with a web browser is a type of communication network.

Re claims 31 and 51, Smith teaches information displayed is advertising information (col. 9, lines 38-40).

Re claims 32 and 52, Smith teaches information displayed is one of the group consisting of news, weather, sports, traffic updates and maps (col. 10, lines 19-55).

Re claims 33 and 53, Smith teaches information displayed is merchandising information providing the customer an opportunity to select from one or more items displayed (col. 10, line 56 to col. 11, line 3).

Re claims 34 and 54, Smith teaches information displayed is live video information of a person communicating with the customer to provide a video intercom (col. 6, lines 50 to col. 7, line 10). In other words, Smith discloses a video monitor corresponding to a video intercom as claimed.

Re claims 35 and 55, Smith teaches using hypertext markup language and hypertext transfer protocol to carryout the steps of displaying, prompting, receiving, transferring and providing (figs 2a-4 and 6).

## Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Thao Havan whose telephone number is (571) 272-8111. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct-uspto.gov/>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

TTH  
4/3/2006



HANI M. KAZIMI  
PRIMARY EXAMINER